

**OPINION
59-146**

February 4, 1959 (OPINION)

INSURANCE

RE: Nonprofit Medical Service Corporations - Annual Statement -
Filing Can Be Compelled

This is in response to your letter of January 30, 1959 in which you asked for an opinion whether or not a penalty could or would be imposed upon a "nonprofit medical service corporation" for failure to file an annual statement. The nonprofit medical service corporation is governed by the provisions of chapter 26-27 of the 1957 Supplement to the N.D.R.C. of 1943.

The annual statement referred to presumably is the one provided for in section 26-2706 of the 1957 Supplement to the N.D.R.C. of 1943. Chapter 26-27 of the 1957 Supplement which deals with nonprofit medical service corporations does not in itself provide for a penalty for failure to comply with the provisions of such chapter. It is also noted that section 26-2702 in substance provides that such a corporation shall not be subject to the laws of the state relating to insurance or insurance companies, except as specifically provided for in chapter 26-27.

From this provision we would conclude that the general statutes involving insurance companies do not apply.

It is also noted that section 26-2713 of the 1957 Supplement to the N.D.R.C. of 1943 provides that unless otherwise specified the laws relating to nonprofit charitable organizations would be applicable to all corporations created under chapter 26-27.

In referring to the laws governing charitable and benevolent corporations we do not find any specific penalties set out in those laws for failure to comply with the statutory provisions. From this we must conclude that there is no specific criminal penalty that can be imposed for failure to comply with a statutory provision. This does not eliminate the control to the corporation, nor does it mean that the corporation can avoid complying with the provisions of the Act. If the corporation refuses to file the annual statement as required in section 26-2706 the insurance commissioner may proceed against the corporation by mandamus. If the mandamus order is not followed the corporation and its officers can then be penalized in a contempt proceedings. Further, if the corporation still refuses to comply with the statutory provisions to file its annual report application can be made, under the general provision of law, to have the charter revoked.

Generally a corporation is permitted to exist and be the recipient of a franchise by virtue of state law. It is understood that the corporation will comply with the statutory provision under which it exists.

It is therefore our opinion that while there is no specific criminal penalty provided for in the statutes for failure to file an annual report, there is, however, a remedy in law which can compel the corporation to file its report or otherwise be subject to contempt proceedings and which could result in both a fine and imprisonment, and also subject the corporation to forfeiture of its charter.

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